

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

BRAYAN RUBIO RUBIO,

Petitioner,

v.

SHERIFF DAVID HARDIN,
GARRET J. RIPA, ACTING
DIRECTOR TODD M. LYONS,
SECRETARY KRISTI NOEM,
DAREN K. MARGOLIN,

Respondents.

Case No. 2:26-cv-00125-KCD-NPM

PETITIONER'S STATUS REPORT

Petitioner Brayan Rubio Rubio, through undersigned counsel, respectfully submits this status report to inform the Court of the outcome of the bond hearing held pursuant to the Court's May 19, 2026 Order. Doc. 24.

On May 21, 2026, Immigration Judge Stuart A. Siegel conducted a bond hearing at the Broward Transitional Center. Doc. 25-1. The IJ's written decision reflects that both sides submitted evidence, both sides questioned Petitioner, and the IJ reserved his decision to carefully consider both parties' positions before ruling. *Id.* The IJ found that Petitioner is not subject to mandatory detention, that there is no jurisdictional impediment to setting bond, and that Petitioner does not pose a danger to the community. *Id.* However, the IJ denied bond, finding Petitioner to be a flight risk.

Petitioner respectfully draws the Court's attention to the following aspects of the IJ's analysis:

1. The IJ identified Petitioner's non-final removal order as the factor he "weighs most heavily" and concluded that "there is no bond amount that would ameliorate the risk of flight" because there will be no future hearing date until the Board of Immigration Appeals ("BIA") rules on Petitioner's appeal. *See* Doc. 25-1. Under *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006), no single factor is per se dispositive in an individualized bond determination. The Court's May 19 Order directed the IJ to "meaningfully evaluate whether alternatives to detention can mitigate any flight risk." Doc. 24 at 6. The IJ's finding that no bond amount could ameliorate flight risk forecloses that inquiry. The decision does not discuss GPS monitoring, reporting conditions, or any other alternatives to detention. *See* Doc. 25-1.

2. The IJ treated Petitioner's work without employment authorization as a negative factor, characterizing it as a violation of law. *Id.* Working without authorization is the ordinary condition of most undocumented noncitizens in the United States and is not among the nine *Guerra* factors. The IJ did not explain how this factor relates to flight risk or danger to the community, which are the only two relevant inquiries under 8 U.S.C. § 1226(a).

3. The IJ characterized Petitioner's entry without inspection as a violation of 8 U.S.C. § 1325, "a 2nd degree misdemeanor." Doc. 25-1. Petitioner has never been charged with or convicted of a § 1325 offense. Manner of entry is a *Guerra* factor, but the IJ's characterization imports criminal culpability into a civil bond determination for conduct that occurred over eleven years ago.

4. The IJ raised the presumption under INA § 204(c) [8 U.S.C. § 1154(c)] that Petitioner may have entered his marriage to obtain an immigration benefit, but then acknowledged that the presumption "should not be difficult to overcome" given Petitioner's U.S. citizen child. Doc. 25-1. The IJ also cited USCIS processing times of 50 months for the I-130 and 39 months for the I-601A as support for his conclusion that Petitioner lacks an incentive to appear. *See id.* The length of the adjudicatory process is equally probative of an incentive to remain in compliance with proceedings, and the I-130 adjudication is within U.S. Citizenship and Immigration Services' jurisdiction, not the Immigration Court's.

Petitioner submits this status report for the Court's information and awareness. Should the Court require any additional information, undersigned counsel is prepared to provide it.

Date: May 26, 2026

Respectfully submitted,

/s/ Martin D. Rosenow

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